

LEON JEFFCOAT ET AL.

IBLA 82-823

Decided July 29, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease M 47070.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Description--Oil and Gas Leases:
Description of Land

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Rentals

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

APPEARANCES: Leon Jeffcoat, et al., pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Leon Jeffcoat, J. C. Small, and T. V. Baxter appeal from the April 28, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), which rejected their noncompetitive over-the-counter oil and gas lease offer M 47070 because the advance rental was more than 10 percent deficient citing 43 CFR 3103.3-1. The decision further stated that:

Your offer covered 1920.00 acres for which advance rental in the amount of \$1920.00 is required. You submitted only \$1600.00, leaving a deficiency of \$320.00.

It has been ruled that the description of all of the land in a section, even though it excludes land not available for leasing, is considered to be an offer to lease the entire section, and advance rental is required for all the land described. Milan S. Papulak, 30 IBLA 77 (April 18, 1977).

4: Appellants' offer filed June 23, 1980, contained the following information under items 2 and

2. Land requested: State Montana, County Lake Flathead, T. 26 N. R. 18 W. P.M. meridian,

Sec. 5: All except patent 51163

Sec. 8: All except 1396, 3634, 772

Sec. 9: All

Total area 1600 acres

* * * * *

4. Amount remitted: * * * Rental \$1600.

Appellants argue that "contrary to the ruling cited their description was specific as to the acreage requested." It specifically excluded patent 51163, 1396, 3634, and 772 and was not insufficient to identify the land included within the offer. 1/

[1] The identification of a section of land coupled with the expression "all except _____" constitutes, by the ordinary meaning of the words, an offer to lease all of the land in the given section that is open and/or available to leasing except that portion which, as indicated, is not sought. The terms of the noncompetitive oil and gas lease itself (form 3120-3) provide that the applicant "offers to lease all or any of the lands described * * * that are available for lease." Thus, the intent of the lease offeror is to lease only those lands described and an offer for more should not be imputed to him.

The controlling regulation, 43 CFR 3101.1-4(a), states: "Surveyed Lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township and range." The purpose of this regulation is to require the offeror to give a description which is at least sufficient on its face to delimit the land applied for. Milan S. Papulak, 63 IBLA 16 (1982). Appellants do this. The description on the offer describes clearly what land

1/ Appellants have withdrawn the following lands from their offer:

T. 26 N., R. 18 W.

sec. 8: E 1/2

sec. 9: All

appellants do and do not desire and enables BLM to ascertain this. Another purpose for the regulation is that BLM receives a large volume of oil and gas lease applications and simply does not have the time or money to spend determining the precise proper description of the lands offerors desire. The burden of submitting an offer which accurately describes the lands sought is placed in the regulation appropriately on those seeking to benefit from the public lands. Milan S. Papulak, *supra*. Appellants have met this burden. They indicate which lands they wish to include in their offer and which they do not wish to include.

The Board has considered the issue of ambiguous land descriptions in oil and gas lease offers previously. In Milan S. Papulak, 30 IBLA 77 (1977), where appellant's land description included the words "all available" and they submitted advance rental which was less than 10 percent deficient, the Board reversed BLM's rejection of the lease offer and remanded the case for further adjudication consistent with its decision stating that "both descriptions constitute an offer to lease all of the land available for leasing within a given section. In Milan S. Papulak, 63 IBLA 16 (1982), where appellant's oil and gas lease offer included land descriptions, "ALL (Excl. fee)" were rejected by BLM. The Board stated that:

Appellant has not denied that his use of this language to describe certain parcels in his offer do not comply with the regulation; * * *.

* * * * *

* * * We are not aware of any reason compelling rejection of an entire oil and gas lease offer because the descriptions for some of the lands are defective. The BLM decisions as to offers * * * are modified to reflect rejection of the offers only as to the lands improperly described.

63 IBLA at 17, 18.

In the aforementioned cases, the land descriptions in question were obviously more imprecise than those now before us and we determined them not to be acceptable. In those cases BLM had to go outside of the offer form itself to determine exactly what land the offer embraced. However, in this case, appellants have gone further and specifically indicated those portions of land they do and do not desire. Hence, we feel appellants' description is sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

[2] This raises the issue of whether a sufficient payment of advance rental was submitted with the lease offers. BLM erred in stating that appellants' offer covered 1,920 acres and that \$1,920 was due. One thousand six hundred acres was embraced in the offer and \$1,600 advance rental was tendered. In accordance with 43 CFR 3103.3-2(a), there is no deficiency.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further adjudication consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

